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OFFICE OF PETITIONS

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In re Application of	:	
Markus Jildinger et al.	:	
Application No. 10/707,770	:	DECISION ON PETITION
Filed: January 11, 2004	:	PURSUANT TO
Attorney Docket No.: MP3	:	37 C.F.R. § 1.137(A)
Title: METHOD AND SYSTEM FOR	:	
SELLING AND/ OR DISTRIBUTING	:	
DIGITAL AUDIO FILES	:	

This is a decision on the petition pursuant to 37 C.F.R.
§ 1.137(a), submitted on March 9, 2009.

This petition is **GRANTED**.

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed March 21, 2008, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were requested. Accordingly, the above-identified application became abandoned on June 22, 2008. A notice of abandonment was mailed on January 22, 2009.

ANALYSIS

A grantable petition pursuant to 37 C.F.R. § 1.137(a) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(1);
- (3) A showing to the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable, and;
- (4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this petition, Petitioner has included, *inter alia*, the petition fee and an amendment.

Requirements (1) - (3) of Rule 1.137(a) have been satisfied. The fourth requirement is not applicable, as a terminal disclaimer is not required.¹

Petitioner has alleged that a response was timely filed on May 14, 2008. Petitioner has further included an Electronic Acknowledgment Receipt which evinces that an "Applicant Arguments/Remarks Made in an Amendment" was received on May 14, 2008.

The electronic file has been reviewed, and a response to the non-final Office action has been located in the same, consisting of a cover sheet and nine pages of remarks, along with a cover sheet and twelve pages of claims. The Electronic Acknowledgment Receipt described in the preceding paragraph has also been located.

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that Petitioner has met his burden of establishing that a response was timely submitted on May 14, 2008.

CONCLUSION

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of

¹ See Rule 1.137(d).

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this decision, so that the amendment that was received on May 14, 2008 can receive further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/122), may be found at <http://www.uspto.gov/web/forms/sb0122.pdf>.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.²

/Paul Shanoski/
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² Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.